

Message Text

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TO AMEMBASSY OTTAWA

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TAGS: ECSM, ENRG, PGOV, US, CA

SUBJECT: US-CANADIAN URANIUM ANTITRUST CONSULTATIONS--
FEBRUARY 23, 1978.

REF: A) OTTAWA 799 B) STATE 38468.

1. SUMMARY: US AND CANADIAN DELS, CHAIRED BY ASSISTANT
SECRETARY KATZ AND ASSISTANT UNDER SECRETARY MC PHAIL
RESPECTIVELY, MET ON FEBRUARY 23, TO CONSULT FURTHER ON
POSSIBLE GOC COOPERATION IN GRAND JURY URANIUM ANTITRUST
INVESTIGATION. GOC SOUGHT US ASSURANCES THAT ANY INFO
PROVIDED BY CANADIANS WOULD NOT BE USED TO BRING CRIMINAL
INDICTMENTS AGAINST PERSONS OR COMPANIES FOLLOWING GOC
DIRECTIVES. CANADIAN DEL ALSO REQUESTED DETAILS OF GRAND
JURY SCHEDULE AND PROCEDURES FOR FACTORING IN QUESTIONS
OF COMITY AND PUBLIC POLICY. WITH SATISFACTORY ASSURANCES,
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CANADIAN DEL INDICATED GOC COULD BE "FORTHCOMING". THESE
AND OTHER QUESTIONS ADDRESSED AT FOLLOW-ON ATTORNEYS'
MEETING CHARACTERIZED BY BOTH SIDES AS A USEFUL EXCHANGE.
US ASSURANCES WERE LESS BROAD THAN GOC HAD HOPED; HOWEVER,
POSSIBILITY EXISTS GOC MAY TO SOME EXTENT RESPOND TO JUSTICE
DEPARTMENT'S QUESTIONS DELIVERED AT DECEMBER 5, TALKS. END
SUMMARY.

2. DURING SUBJECT MEETING, CANADIANS INDICATED THEIR

RECOGNITION THAT JUSTICE HAD TO PURSUE URANIUM ANTITRUST INVESTIGATION. GOC REP MC PHAIL CHARACTERIZED CANADIAN POSITION AS "CAUTIOUS BUT NOT STONEWALLING". AFTER CONSIDERING QUESTIONS LEFT IN OTTAWA BY US REPS DURING DECEMBER 5 CONSULTATIONS, CANADIANS WERE NOW PREPARED TO SEEK CABINET VIEWS ON PASSING INFORMATION TO THE JUSTICE DEPARTMENT. BEFORE PROCEEDING, HOWEVER, THEY HAD TO NAIL DOWN GRAND JURY SCHEDULE AND SEEK ASSURANCES FROM US REGARDING IMPLICATIONS OF PROVIDING INFORMATION.

3. SPECIFICALLY, GOC NEEDED ASSURANCES THAT US SIDE WOULD RECOGNIZE CANADIAN NATIONAL INTEREST IN ACTIVITIES OUTSIDE US AND WOULD FORBEAR IN THE APPLICATION OF US ANTITRUST LAW EXTRATERRITORIALLY. MOREOVER, CANADIANS WOULD NEED ASSURANCES THAT INFORMATION PROVIDED JUSTICE DEPARTMENT WOULD NOT BE USED TO BRING CRIMINAL INDICTMENTS AGAINST PERSONS OR COMPANIES FOR ENGAGING IN ACTIVITIES OUTSIDE THE US AT THE DIRECTION OF THE CANADIAN GOVERNMENT. MC PHAIL ADDED THAT WITH SATISFACTORY ASSURANCES AND INFORMATION AS TO THE JUSTICE DEPARTMENT'S APPROACH TO THE GRAND JURY PROCEEDING, CANADA WOULD BE FORTHCOMING.

4. KATZ SAID THAT THE OBJECTIVES OF TALKS SHOULD BE MUTUAL CONFIDENTIAL

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COMPREHENSION AND THE RECOGNITION THAT MISTAKES HAVE BEEN MADE ON BOTH SIDES. WE WERE HOPEFUL IT WOULD PROVE POSSIBLE TO CLOSE THE GAP IN OUR THINKING AND ARRIVE AT A PRODUCTIVE UNDERSTANDING OF EACH OTHER'S CONCERNS. JUSTICE DEPARTMENT REP ROSENTHAL REPORTED THE GRAND JURY EXPIRES MAY 11 AND WE WOULD SHORTLY BE PROVIDING THE CANADIANS WITH EXPLICIT INFORMATION AS TO SCHEDULING OF GRAND JURY PROCEDURES. ROSENTHAL SAID THE QUESTION OF PRIOR ASSURANCES WAS A DIFFICULT ONE. HE OBSERVED THAT A DISCUSSION BETWEEN CANADIAN AND US OFFICIALS WITHOUT A TRANSFER OF DOCUMENTS WOULD NOT DEVELOP EVIDENCE SUITABLE FOR USE IN COURT, BUT COULD SPARK ANOTHER SUBPOENA TO A US COMPANY OR PERSON IF IT APPEARED THAT EARLIER SUBPOENAS HAS LEFT GAPS. (HE EMPHASIZED THAT THIS WAS HIGHLY UNLIKELY.) IN GENERAL, IT WAS UP TO CANADA TO DECIDE WHAT INFORMATION WOULD BE IN ITS INTEREST TO PASS, ADDING THAT MUCH OF THE INFORMATION COULD BE EXCULPATORY. IT WAS NOT POSSIBLE TO MAKE ANY DECISION AT THIS STAGE AS TO WHAT JUSTICE WOULD RECOMMEND TO THE GRAND JURY.

5. CANADIAN ENERGY, MINES AND RESOURCES REP RUNNELS THEN WONDERED WHETHER US HAD TAKEN INTO FULL ACCOUNT THE IMPACT

OF ITS ANTITRUST ACTIONS ON THE FUTURE AVAILABILITY OF URANIUM. HE SPECIFICALLY REFERRED TO A PRIVATE SUIT BROUGHT BY THE TVA WHICH SEEMED TO CONFLICT WITH TVA'S

PLAN TO IMPORT CANADIAN URANIUM. KATZ SAID THAT IT WAS IN THE NATIONAL INTEREST TO CONCLUDE THE ANTITRUST INVESTIGATION AND THAT POLITICAL AND ECONOMIC QUESTIONS SUCH AS THE ONES RUNNELS HAD RAISED COULD BE TAKEN INTO ACCOUNT AFTER THE GRAND JURY'S DISCOVERY PERIOD WHEN PUBLIC POLICY CONSIDERATIONS WOULD BE EXAMINED. IN SUMMING UP KATZ SAID WE SEEMED TO BE IN A CIRCULAR SITUATION WITH THE US SEEKING INFORMATION WHICH CANADA CAN'T PROVIDE WITHOUT ASSURANCES WHICH WE CAN'T GIVE UNLESS WE KNOW THE EXTENT OF THE INFORMATION AVAILABLE. BOTH SIDES EXPRESSED THE CONFIDENTIAL

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HOPE THAT THE LEGAL CONSULTATIONS AT JUSTICE COULD HELP BREAK THIS CIRCLE.

6. AT A FOLLOW-ON MEETING AT JUSTICE, A HELPFUL EXCHANGE WAS HELD BETWEEN JUSTICE DEPARTMENT ATTORNEYS AND THEIR CANADIAN COUNTERPARTS. JUSTICE REPS RECONFIRMED POSITION THAT CRIMINAL ACTION WOULD LIKELY NOT BE BROUGHT BY THE GRAND JURY IN INSTANCES WHERE GOC DIRECTIVES WERE FOLLOWED BY PERSONS OR COMPANIES. JUSTICE WAS UNABLE, HOWEVER, TO GIVE THE SAME ASSURANCES WHERE CIVIL ACTIONS WERE INVOLVED (SINCE GOVERNMENT COMPULSION IS NOT, IN ITS VIEW, ALWAYS A DEFENSE IN SUCH CASES) OR WHERE STRICT GOVERNMENT COMPULSION WAS NOT INVOLVED. THE CANADIANS WERE FURTHER ASSURED THAT CONSIDERATION OF COMITY WOULD VERY DEFINITELY PLAY A ROLE IN JUSTICE DEPARTMENT'S FINAL POSITION AND THAT CANADIAN POLICY WOULD BE TAKEN INTO ACCOUNT. CANADIANS DESCRIBED THE RELATIONSHIP OF CROWN CORPORATIONS TO GOC AND EXPLAINED GOC PROCEDURES COVERING URANIUM EXPORTS. MC PHAIL CONCLUDED THE MEETING BY SUGGESTING THAT GOC REPS MIGHT COME TO WASHINGTON AROUND MARCH 6 (JUSTICE DEPARTMENT AND CANADIAN ATTORNEY OFFICIALS ARE SCHEDULED TO HAVE GENERAL TALKS MARCH 7) TO REVIEW THE GOC'S DECISIONS ON WHAT IF ANY INFORMATION COULD BE RELEASED. MC PHAIL REPORTED TO KATZ THAT THIS EXCHANGE WAS USEFUL BUT DOJ ASSURANCES WERE LESS BROAD THAN GOC HAD HOPED.

7. COMMENT: POLICY-LEVEL TALKS WERE CARRIED OUT IN A MORE POSITIVE ATMOSPHERE THAN HAS CHARACTERIZED PREVIOUS URANIUM ANTITRUST CONSULTATIONS. CLARIFICATION OF GRAND JURY PROCEDURES AND SCHEDULING AS WELL AS BRIEFING ON CURRENT STATE OF PLAY IN OTTAWA WAS USEFUL AND UNDOUBTEDLY CONTRIBUTED TO A BETTER UNDERSTANDING OF THE UNDERLYING CONCERNS OF BOTH SIDES. IT APPEARS POSSIBLE THAT GOC MAY CONFIDENTIAL

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TO SOME EXTENT RESPOND TO DOJ QUESTIONS DELIVERED DECEMBER
5. CHRISTOPHER

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